

Food Service Sanitation Section

POLICY

Application of the Mootness Principle on Evaluation of LHDs

PURPOSE

This policy is to clarify when the Evaluation Officer may apply the principle of mootness to a local health department's (LHD) failure to meet a Minimum Program Requirement (MPR).

THE PRINCIPLE

The mootness principle applies to a deficiency that has been completely resolved, and there is no likelihood that the deficiency will recur.

When an evaluation reveals an MPR Indicator has been unmet during the review period, but the LHD complies with the requirement on the date of the evaluation, the Evaluation Officer may examine the deviation under the principle of mootness. Before applying the mootness principle, the standard of proof is a heavy one. The LHD must demonstrate that it is *absolutely clear* that the deficiency could not reasonably be expected to recur.

PROCEDURE

All four of the following elements must be met during the evaluation before the mootness principle may be applied to a LHD evaluation:

1. The deficiency has clearly been *completely* corrected (or the Indicator has ceased to exist). Predictable protestations of repentance and reform are insufficient and must be supported with factual evidence of complete correction.
2. The facts demonstrate that it is absolutely clear the deficiency could not reasonably be expected to recur. A good or a lucky day is not a state of compliance. Nor is a dubious state in which a past problem is not recurring at the moment, but the cause of the problem has not been completely eradicated.
3. Elements 1 and 2 above are documented in the evaluation report before the mootness principle may be applied.
4. To ensure consistency, all use of the mootness principle must be reviewed and approved by the Evaluation Officer prior to application.